IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3824 of 2006

Date of Decision: 9.11.2006

State of Haryana & Anr. ...Appellants

Vs.

Tejinder Mohan Singh & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.M.L.Saggar and Mr.Jitendra Chauhan,
Additional Advocate General,
for the appellants.

Vinod K.Sharma, J. (Oral)

This order shall dispose of two Regular Second Appeals bearing RSA No. 3824 of 2006 titled 'State of Haryana & Anr. Vs.Tejinder Mohan Singh & Anr. and RSA No. 3885 of 2006 titled 'Municipal Council, Ambala Sadar, Ambala Cantt Vs. Tejinder Mohan Singh Liberhan & Ors.'

For the sake of facility, the facts are being taken from RSA No.3824 of 2006.

The plaintiff-respondent filed a suit for declaration to the effect that he is one of the co-owners and in possession of property bearing

No.127-A situated at Rai Market, Ambala Sadar, Ambala Cantt and the show cause notice dated 23.12.1999 and notice of resumption dated 1.10.2001 received on 4.10.2001 in respect of the said property were illegal, null and void, with a consequential relief of permanent injunction restraining the defendant-appellants from interfering in any manner in his possession over the suit property. It was also prayed that permanent injunction be issued restraining the defendant-appellants from interfering in any manner in his possession as perpetual lessee over the suit property No.127-B situated at Bank road, Ambala Sadar, Ambala Cantt..

Along with this, it was claimed that the property bearing No.127-A was owned and possessed by Late Sardar Mokha Singh and sons who had constructed an Ice Factory on this property in the year 1898. The property bearing No.127-B was on permanent lease with Sardar Mokha Singh and property bearing No.170 was on lease for ninety nine years with him. Sardar Mokha Singh had died in the year 1914 and his rights were inherited by his sons Diwan Alakhdhari and Pritam Singh. In order to pay debts of their father the properties bearing No.127-A and 127-B were mortgaged along with property No.170 with possession with Rai Bahadur Lala Banarsi Dass by way of registered mortgaged deed dated 21.12.1924 for a sum of Rs.80,000/- wherein they were described as owners of property No.127-A and lessee over property No.127-B and property No.170. The Cantonment Board sanctioned the mutation of mortgage vide resolution No.29 dated 19.3.1924. Rai Bahadur Lala Banarsi Dass died somewhere in 1934 and his mortgagee rights in respect of suit property were inherited by his legal representative namely Kuldip Parkash and

Kulbhushan etc.

Later on Punjab National Bank got the equity on redemption auctioned property of the share of Pritam Singh and the same was purchased by his brother Diwan Alkahdhari who became sole owner of the property No.127-A and lessee over properties Nos.127-B and 170. In the year 1967 Diwan Alkahdhari filed a suit for redemption against the legal heirs of Rai Bahadur Lala Banarsi Dass in the court of Senior Sub Judge, Ambala and during the pendency of the said suit Rai Diwan Alkahdhari sold his entire rights in property No.127-A and lease hold rights in properties No.127-B and 170 to Smt. Vidya Wati Liberhan and her cousin Smt. Chand Hoon vide registered sale deed dated 26.4.1969, Thereafter, mother of the plaintiff-respondent and her cousin were substituted in place of Diwan Alkahdhari in a pending suit for redemption . In that suit in the year 1972 a compromise was arrived at between the legal representatives of Rai Bahadur Lala Banarsi Dass on the one hand and mother of the plaintiff-respondent and her cousin Chand Hoon on the other side on payment of Rs.45,000/-. The said amount was paid in the court to mortgagees i.e. Kuldip Prakash etc and accordingly a decree for possession by redemption of properties in dispute was passed by the then learned Senior Sub Judge, Ambala vide judgment and decree dated 9.6.1972 in favour of the mother of plaintiff-respondent and her cousin. One of the defendants namely Smt. Sarla Devi had not entered into compromise and contested the suit. Said suit though initially decreed in her favour, however, on remand the suit was dismissed by holding that Smt. Sarla Devi was not entitled to any amount rather she was entitled to refund of an excess amount to the extent of

Rs.10,417/- received by her. The appeal against the said judgment was dismissed as also the Regular Second Appeal. During the pendency of these proceedings, Municipal Committee Ambala sanctioned the mutation in favour of the plaintiff-respondent pursuant to sale deed dated 26.4.1969.

In the execution application objections filed by the Income Tax Department were also dismissed up to Hon'ble Supreme Court. During the pendency of the execution application Chand Hoon sold her half share to the plaintiff-respondent and his brothers by way of registered sale deed dated 7.1.1988. Thus, it would be seen that since the year 1924 there was never a cloud on the title of Sardar Mokha Singh or his successor-in-interest.

The Estate Officer-cum-Deputy Commissioner, Ambala issued a show cause notice on 23.12.1999 claiming therein that property No.127-A was an old grant and therefore, was the ownership of State of Haryana. It was also claimed that property was required to be resumed on payment of Rs.11,15,600/-. Said notice was contested by the plaintiff-respondent.

On the pleadings of the parties the learned Trial Court framed the following issues:-

> "1. Whether the plaintiff is the owner and in possession of the property No.127-A and perpetual lessee of property No.127-B? OPP
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> 2. Whether findings in Civil Suit No.215/CS of 1989 operates as res judicata between the parties? OPP
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> 3. Whether GGO No. 179 of 1836 was ever made applicable to Ambala Cantt by means of a Gazette notification?

OPD

4. Whether the property in dispute No.127-A is held an old grant terms duly subscribed to by the grantee under GGO No. 179 of 1836? OPD

5. Whether the defendants Nos. 1 and 2 became the owner on the basis of letter dated 5.2.1977 written by under Secretary addressed to Director,Military Land and Cantonment? OPD

6. Whether after excision of the area, Cantonment Act and other Central Act without delegation/adoption can be applied to be excised area by the defendants? OPD

7. Whether the defendants Nos. 1 and 2 have jurisdiction to resume the property No.127-A by issuing Notices No.ESTO/99/19, dated 23.12.1999 and ESTO/2001/496 dated 1.10.2001? OPD

8. Whether the defendants were not required to pass speaking order? OPD

9. Whether the defendants were not required to give opportunity of hearing and leading evidence to the plaintiff? OPD

10. Whether the compensation has been rightly determined on market value? OPD

11. Relief."

The learned courts below on appreciation of evidence held that the plaintiff-respondent was owner in possession along with his brothers and sister and sister-in-law over property No.127-A and had lease hold

rights over property No.127-B. The learned courts below further held that though the appellant-respondents was claiming ownership over the property, they had failed to discharge their onus.

The judgment and decree of the trial Court was challenged before the learned lower Appellate Court wherein it was claimed that the documentary evidence produced by the appellant/respondents was wrongly ignored. It was claimed that the said documents were duly proved on record and therefore, should have been admitted in evidence. It was claimed that property No.127-A is an old grant and claimed that GGO No.179 of 1836 is applicable to Ambala Cantonment. It was further claimed that by way of notification dated 5.2.1997 the property was transferred to the State of Haryana and thus, the State of Haryana became owner of the property.

These contentions were duly considered and rejected by the learned lower Appellate Court on the basis of evidence produced by the parties. The only justification given for sanctioning of mutation was that these mutations were only sanctioned for tax purposes. This contention therefore, was rightly rejected by the learned lower Appellate Court. The learned lower Appellate Court came to the conclusion that Ex.DW1/2 was not proved in accordance with law and therefore, could not be taken into consideration. Similarly, General Land Register was also not proved on record and thus, the learned lower Appellate Court below came to the conclusion that there was no admissible evidence to support the contention of the State. GGO relied upon by the appellant was rejected by the learned lower Appellate Court by observing as under:-

" A bare perusal of the aforesaid GGO clearly goes to

show that a promulgation has to be issued for making the said GGO applicable to the Station of Bengal Army, because whole of India was not part of British India in 1836. There is also no evidence to prove that Ambala Cantonment was ever a Station of Bengal Army. Even, DW 6, Gurpal Singh- Lease Assistant, Municipal Council, Ambala Sadar, Ambala Cantt admitted in his cross examination that there was no notification by which said GGO was made applicable to the Ambala Cantonment. In his cross-examination, Banta Ram (DW 2) further admitted that GLR, copy Ex.DW2/1, was first prepared after 15.6.1959. He further stated that after 5.2.1977, no Cantonment or Army Laws were applicable to the excised area except those contained in the Excision Agreement, i.e. letter dated 5.2.1977, copy of which is Ex.DW2/2. The copy of notification dated 54.2.1977 is Ex.DW 2/3 in which schedule of the area excluded from the Cantonment is given. The copy of certificate regarding transfer of 150 acres of land by the State Govt. is Ex.DW 2/6. The copy of the order of State Government is Ex.DW 3/1, whereby, the Deputy Commissioner, Ambala was deputed as the Estate Officer for management of the Govt. Land in excised area of Ambala Cantonment. The copy of the order of the Haryana Government is Ex.DW 3/2, whereby the Estate Officer, Ambala was authorized to deal with in respect of the old grants of the excised area. Similarly, several other documents

have been produced by the defendants/appellants. As referred to above, the star document of the defendants/appellant is copy of G.L.R. Ex.DW 2/1 in which property No.127-A is shown as old grant. However, authenticity of this document has been disputed by the plaintiff/respondent. Banta Ram (DW 2), who produced this document, clearly admitted that entry of this G.L.R. Came for the fist time in year 1959. No deed of grant of property No.127-A has been produced. There is no notification produced on the record to prove that GGO No.179 of 1836 was made applicable to the Ambala Cantonment. He also admitted that Ambala Cantonment was never the Station of Bengal Army. Even otherwise, as per the clause 7 of GGO No.179 of 1836, even private properties in the Cantonment were recognized. Therefore, it could not be said that there was no private property in the Cantonment area at that time. No evidence has been produced to prove that propertyNo.127-A was old grant to Mokha Singh. Even Yaspal (DW 5) admitted in his cross-examination that there was no conveyance deed or notification regarding transfer of ownership from the Government of India to the State of Haryana. This witness also admitted that no power of resumption has been given or conferred or mentioned on the letter Ex.DW2/2 and there was no power of cancellation of lease conferred on the State of Haryana in the said letter. Therefore, the learned Trial Court rightly concluded that it

could not be said that the excised area was transferred in favour of State of Haryana. The Trial Court also observed that by virtue of the letter dated 5.2.1977, only limited powers had been conferred on the State of Haryana for managing the excised area by the Notified Area Committee. No copy of the deed of grant regarding property No.127-A has been produced nor any terms and conditions thereof have been proved. Therefore, there is no basis to hold that property No.127-A was held by Late Sardar Mokha Singh on old grant basis. The learned Trial Curt vide the impugned judgment and decree has considered the entire oral and documentary evidence adduced by the parties bare thread and recorded the firm findings of fact to the effect that property No.127-A was not an old grant that and that the plaintiff/respondent and his other family members, as mentioned in the plaint, were owners in possession of the same. The said finding of fact is based on proper appreciation of evidence in the right perspective and therefore,there is no reason for this court to interfere with the same. There is no dispute with regard to the propositions of law laid down in the authorities relied upon by the learned Government Pleader but the same have no application to the facts of the present case because in the present case, there is a factual dispute as to whether property No.127-A was an old grant or not. Therefore, abstract proposition of law could not be applied to the facts of the present case. Hence, there is no

> merit in the various contentions raised on behalf of the defendants/appellants. Accordingly, findings recorded by the learned Trial Court on various issues deserve to be upheld and the same are accordingly affirmed."

Mr. M.L.Saggar, learned Additional Advocate General, Haryana, appearing on behalf of the State of Haryana contended that the documents relied upon by the appellants have been wrongly ignored. According to the learned State counsel the evidence on record showed that it was an old grant.

However, this contention of the learned counsel for the appellants cannot be accepted in view of the concurrent findings of the learned courts below holding that the appellant-defendants have failed to prove their ownership or to show that the property in dispute was an old grant. It has to be noticed that since the year 1924 the property has been shown to be the ownership of plaintiff-respondent or his predecessors-in-interest. In the absence of affirmative evidence to the contrary, the concurrent findings of the learned courts below are not open to challenge in Regular Second Appeal.

It is not in dispute that no primary evidence has been led to prove that the property was old grant to interfere with the concurrent finding of the learned courts below. Reliance on regulation of Governor General in the facts and circumstances of the case was also misconceived. The reading of the regulation shows that a positive order has to be passed by the Government for granting of sites of land in Cantonment. Nothing has been proved on record to show that any order has been passed by the

Central Government with respect to the grant in term of the regulation relied upon by the appellant herein.

Learned counsel for the appellants thereafter placed reliance on the judgment of Hon'ble Supreme Court in **Chief Executive Officer etc. Vs. Surendra Kumar Vakil and others AIR 1999 SC 2294** to contend that the property which was an old grant could be resumed.

The cited judgment has no application to the facts of the present case. The plaintiffs in the said case claimed the ownership but produced no evidence in support thereof. In the present case the plaintiff-respondents are owners in possession in pursuance to the sale deed and mutation of which has been duly sanctioned by the competent authority. In the present case the State has miserably failed to prove that the property which was shown to be in the ownership of Sardar Mokha Singh was an old grant.

Thus, the concurrent findings of fact recorded by the learned courts below cannot be interfered with in the Regular Second Appeal.

Accordingly, no question of law much less substantial question of law arises in the present appeal for consideration of this Court.

CM No.9714-C of 2006

This application has been filed for condonation of delay of 136 days in filing the appeal.

The only ground taken for condonation of delay is that the matter was referred to Legal Remembrancer and Secretary to Government of Haryana, Law and Legislative Department for their opinion with regard to the filing of the Regular Second Appeal. It is also mentioned that the Law

and Legislative Department was of the view that it was not a fit case for filing of appeal in the High Court. It has further been pleaded that on 7.12.2005 a letter was written to Executive Officer, Municipal Council, Ambala Sadar, Ambala Cantt that it was not a fit case for filing the Regular Second Appeal. It was the further case that Financial Commissioner-cum-Principal Secretary to Government of Haryana, Urban Development Chandigarh addressed a letter dated 22.12.2005 to the Estate Officer intimating that it was not a fit case for filing an appeal. The ground set up is that Financial Commissioner-cum-Principal Secretary to Government of Haryana Urban Development Chandigarh addressed a letter dated 28.4.2006 to the Director, Urban Development Haryana to depute an official for filing an appeal. Nothing has been disclosed in the application as to what transpired between 22.12.2005 to 28.4.2006 when the decision was reversed. The averments made in the application do not show sufficient cause for condonation of delay. Accordingly this application is dismissed.

Resultantly, the Regular Second Appeal is dismissed on the ground of limitation as well as on merit.

(Vinod K.Sharma)
9.11.2006 Judge
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